

Arizona Human Trafficking Council  
Arizona Prosecuting Attorneys' Advisory Council  
The Governor's Office of Youth, Faith & Family  
McCain Institute for International Leadership, Arizona State University

Presents

## **Sex Trafficking in Arizona: Dynamics, Demand- Reduction & Offender Accountability**

**January 26, 2018**

**Maricopa County Security Building  
Phoenix, Arizona**

## **FUNDAMENTALS OF SEX TRAFFICKING PROSECUTION**

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# FUNDAMENTALS OF PROSECUTING SEX TRAFFICKING CASES

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## Today's Fictional Case

- On Saturday, 911 receives a tip from a hotel maid that a young looking female may be engaging in prostitution. An officer goes to the hotel room to do a knock and talk with the occupant, "Suzy"
- The officer see a bindle of meth in plain view, and arrests Suzy
- Suzy gives a fake name and DOB, but the officer soon learns she is 18 y.o. with a probation violation warrant out of another county
- The officer seizes Suzy's phone & the drugs and calls detectives
- The front desk clerk says "Michael" checked in 3 days ago with Suzy and another young-looking female, and rented two rooms
- Several housekeepers say they saw multiple men coming and going from the rooms over the last 3 days
- A detective runs Michael's info, and learns he is a 40 y.o. felon from CA with recent convictions for aggravated assaults, pandering, and drug offenses. There is also a gang alert for a prison gang.
- A detective tries a knock & talk at Michael's room. Another officer catches Michael climbing out the back window- he lawyers up. Meth, 3 phones, and 16 y.o. Janet are found in Michael's room.



## Today's Fictional Case

- Using a ruse, a detective gets Suzy to give a full statement. She admits Michael has been placing sex ads for her and Janet on the internet. She says they've traveled around Arizona & California for about a year, staying at hotels and turning tricks. Michael gives them meth and a little money, but keeps most of the profits for himself and his gang. Suzy doesn't know the names of the towns
- Suzy says Michael uses his phone to place the ads, and also to take sexual pictures of Suzy and Janet. She shows detectives several ads currently running on Backpage and Craigslist
- Janet says she met Michael at a shelter for runaway kids in Mazatlán, where she and Suzy grew up. Michael's gang snuck them into the USA. She loves Michael and won't say anything else. DCS places Janet in a youth shelter.
- Michael is booked on one count of child sex trafficking and one count of pandering. You are assigned the case Monday morning.
- Your office recently started a "vertical prosecution" program, so you'll be handling the case all the way from charging through sentencing— and beyond.



## The Charging Decision

Who are you going to charge? What are the charges you might file and why? Who are the victims? How many counts are you going to charge? What are the DOVs? Do you have jurisdiction? What are your charging standards? Do you charge everything now, or just what you can prove at this point and hope you can charge more later?



## The Charging Decision


Who are you going to charge?

**Suzy?**

- Why or why not charge Suzy? If you do charge her, what will you charge her with?

**Janet?**


- Why or why not charge Janet? you do charge her, what will you charge her with?



## The Charging Decision - A Victim Centered Approach

This approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner.


A victim-centered approach seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their traffickers brought to justice



## The Charging Decision

Michael?

- What do you charge on Monday when you get the case?
- What do you want to follow up on for future charges?



## The Charging Decision

Michael?

- Child Sex Trafficking – ARS §13-3212
- Sex Trafficking – ARS §13-3212
- Involving a Minor in a Drug Offense – ARS §13-3409
- Sale or Transfer of Dangerous Drugs – ARS §13-3407
- Possession of Dangerous Drugs / Paraphernalia – ARS §13-3407?
- Sexual Conduct with a Minor (position of trust) – ARS §13-1405
- Luring a Minor for Sexual Exploitation – ARS §13-3554
- Sexual Exploitation of a Minor – ARS §13-3553
- Commercial Sexual Exploitation of a Minor – ARS §13-3552
- Any of the Pandering / Prostitution Offenses – ARS §13-3201 *et seq.*?

## Other Crimes You Might Encounter In Trafficking Cases

Homicide- A.R.S. §13-1101 et seq.  
 Witness Influencing or Tampering- A.R.S. §13-2802 *et seq.*  
 Hindering Prosecution- A.R.S. §13-2510 *et seq.*  
 Aggravated Assault- A.R.S. §13-1204  
 Custodial Interference- A.R.S. §13-1302  
 Unlawful Imprisonment- A.R.S. §13-1303  
 Access interference- A.R.S. §13-1305  
 Child Molestation / Sex Abuse- A.R.S. §13-1410 / A.R.S. §13-1404  
 Forgery- A.R.S. §13-2002  
 Identity Theft & Aggravated ID Theft- §13-2009  
 Money Laundering- A.R.S. §13-2317  
 Participating in a Criminal Syndicate- §13-2308  
 Furnish Harmful Item to Minor-A.R.S. §13-3506  
 Child Abuse- A.R.S. §13-3623  
 Kidnapping- A.R.S. §13-1304  
 Unlawfully Obtaining Labor or Services ARS §13-1306  
 Trafficking of Persons for Forced Labor ARS §13-1308  
 Sexual Assault- A.R.S. §13-1406



The list goes on and on.  
 To keep today's  
 presentation short, we  
 can't cover them all!

## Conspiracy

- Acting with the intent to promote or aid the commission of an offense, a person agrees with one or more other persons that one of them will engage in conduct constituting the offense
- One of the parties generally must commit an overt act unless the object of the conspiracy was to commit a felony upon the person of another  
-A.R.S. §13-1003

### Advantages of charging a conspiracy:

- Use co-conspirators statements made in furtherance of the conspiracy
- Ability to use more evidence against a defendant (e.g. more of what happened becomes intrinsic to the case)
- May give you venue and/or jurisdiction over crimes occurring in multiple counties, states and countries
- Conspiracy carries same felony class as the highest felony conspired to



## RICO & Gang Considerations

- Racketeering offenses cover a wide range of crimes committed for financial gain- A.R.S. §13-2301(D)(4)
- Racketeering offenses provide for enhanced (free) subpoena powers for financial records when authorized by the AG
- Racketeering offenses provide for pretrial court management and control of assets and real property
- Racketeering offenses provide for forfeiture of proceeds of offenses
- Illegally Conducting an Enterprise – ARS §13-2312

### Participating In or Assisting A Criminal Street Gang- A.R.S. §13-2321

- According to the FBI, criminal street gangs involved in child prostitution include the **Bloods, Crips, Hells Angels**, as well as many others
- Charging this offense, when appropriate, will allow more evidence to be considered intrinsic to a case, and will help to explain issues such as reluctant witnesses, witnesses with extensive records, snitches, etc.



## Offenses Committed with Intent to Promote, Further, or Assist a Criminal Street Gang – ARS §13-714

- Applies to defendants who are convicted of committing any felony with the **intent to promote, further or assist any criminal conduct by a criminal street gang.**
- The presumptive, minimum and maximum sentence for the offense shall be increased by **three** years if the offense is a **class 4, 5 or 6 felony**
- The presumptive, minimum and maximum sentence for the offense shall be increased by **five** years if the offense is a **class 2 or 3 felony**.
- The additional sentence imposed pursuant to this section is in addition to any enhanced sentence that may be applicable.

## Child Sex Trafficking

**Defendant knowingly: transports or causes a child (or permits a child under his custody) to engage in prostitution, provides the child with the means too engage in prostitution, uses the child for prostitution (i.e. the defendant is the "john"), or is involved in the financing, running, or profit sharing from a child prostitution business**

- A.R.S. §13-3212

"**Prostitution**" means engaging in or agreeing or offering to engage in sexual conduct under a fee arrangement with any person for money or any other valuable consideration.

"**Sexual conduct**" means sexual intercourse, oral sexual contact, S&M, or any direct or indirect fondling of the genitals, anus or female breast

**Sex offender registration** required for all except Johns whose victims were 15-18 and didn't have reason to know the victim was under 18

**If the victim is under 15, DCAC penalties apply**



It is not a defense to non DCAC offenses (and maybe DCAC too??) that the "child" was really an undercover police officer. – *State ex rel. Polk v. Campbell*, 239 Ariz. 405 (2016)

## Child Sex Trafficking

**Pimps** get a class two felony mandatory consecutive sentence:

No prior felonies: 10 – 13.5 – 24 years flat time.

1 Historical Prior: 17 – 24 – 31 years flat time

2 Historical Priors: 24 – 31- 38 years flat time

- no requirement that the historical priors be on different occasions

**Johns** get class six felony if they didn't know or have reason to know the victim was under 17. Minimum sentence of 180 days jail (up to 90 suspended)

**Johns** get class 2 felony if they knew or should have known the victim was 15 -17 years old, and mandatory consecutive sentence:

No prior felonies: 7 – 10.5 – 21 years flat time.

1 Historical Prior: 14 – 15.75 – 28 years flat time

2 Historical Priors: 21 – 28- 35 years flat time

- no requirement that the historical priors be on different occasions



## Sex Trafficking

**Defendant knowingly traffics another person with:**

1. The intent to cause the other to engage in any prostitution or sexually explicit performance by deception, force, or coercion; **or**
2. The knowledge that the other person will engage in any prostitution or sexually explicit performance by deception, force, or coercion  
-A.R.S. §13-1307

Sex trafficking carries a regular class two felony sentencing range

Sex offender registration is NOT required, so use a ARS 13-118 allegation

**"Traffic"** means to entice, recruit, harbor, provide, transport, or otherwise obtain another person. The other person must be 18 or older.

**"Coercion"** means threatening to abuse the legal system, illegally controlling another person's documents or property, extortion, causing or threatening financial harm, or facilitating or controlling another person's access to drugs

**"Force"** means causing or threatening serious harm to another, or causing or threatening to physically restrain another person

## Involving a Minor in a Drug Offense

Defendant knowingly hires, employs or uses a minor to violate any of Arizona's drug possession or sales laws, or

Defendant sells or transfers (or offers to sell or transfer) to a minor any dangerous drug, narcotic drug, marijuana, precursor chemical, regulated chemical or equipment.

Violations are class two felonies with a flat time sentence, and if the victim is under 15 years old, are Dangerous Crimes Against Children

- A.R.S. §13-3409



## Luring a Minor for Sexual Exploitation

**Defendant offers or solicits sexual conduct with a child under 18 and has reason to know the victim is a child-** A.R.S. §13-3554

**"Sexual conduct"** means actual or simulated genital to genital or anal intercourse, oral sex, bestiality, masturbation, S&M, some types of defecation or urination

**Class 3 felony if the minor is over 15, and a DCAC if under 15.**



It is not a defense that the "child" was really a police officer

An aggravating factor involves sending the child sexualized images during the commission of the crime (turns it into a class 2 felony)

## Commercial Sexual Exploitation of a Minor

**Defendant knowingly:** Uses, persuades or induces a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct (or the defendant transports the minor in this state for that purpose or for the purpose of prostitution, or permits a minor in his custody or control to engage in exploitive exhibition)

**Or**


**Defendant knowingly:** Uses, employs persuades, entices, induces or coerces a minor to expose the genitals or anus or the female areola or female nipple for financial or commercial gain

**Or**

**Defendant knowingly:** Uses an advertisement for prostitution that contains a visual depiction of a minor

- A.R.S. §13-3552

**"Exploitive exhibition"** & **"Sexual conduct"** are terms of art defined by statute. Note- this statute criminalizes some images involving a female child's breast.



## Not All Prostitution Cases Involving Consenting Adults Are Misdemeanors

Enticement of persons for purpose of prostitution- A.R.S. §13-3212 (c6F)

Procuring/ placing person in house of prostitution- A.R.S. §13-3203 (c5F)

Receiving earnings of a prostitute- A.R.S. §13-3204 (c5F)


Causing spouse to become a prostitute- A.R.S. §13-3204 (c5F)

Operating or maintaining a house of prostitution- A.R.S. §13-3208 (c5F)

Pandering- A.R.S. §13-3209 (c5F)

Transporting persons for prostitution- A.R.S. §13-3210 (c5F)

Do you *really* want to charge any of these?



## The Charging Decision- Do You Use a Grand Jury or a Preliminary Hearing?

Pros & cons of a Grand Jury?

- Quick and **you are largely in control**
- Avoid subjecting witnesses to recorded testimony & cross exam
- Protect victim from retraumatization
- Transcript can be utilized at a **release hearing** - *Martinez v. Superior Court*, 26 Ariz. App. 386 (1976)

Pros & cons of a Preliminary Hearing?

- More cumbersome & less control over scheduling, etc.
- There is a real live defense attorney in the room
- Witnesses are giving testimony and can be cross examined and **testimony can later be used at trial** if the witness disappears
- The defense gets a shot at your victim
- Testimony can be used at a release hearing

## Penalty Enhancers & Allegations

Allegation of historical and/or non-historical priors

Allegation of multiple offenses on different occasions

ARS §13-714 allegation

Notice of Aggravating Factors

- Statutory:

Emotional and/or physical harm to victim

Prior felony within ten years

Presence of an accomplice

Offenses committed for financial gain

The offense was committed in the presence of a child and “DV relationship” between the defendant and the child

**The defendant committed sex trafficking offense and recruited the victim from a shelter for DV, runaways, foster kids, etc.**

- Non-Statutory:

Gang participation

Defendant brought the victims from another country

## Meeting With Your Case Agent

(I know... this isn't your only case, but try to do this- it's important!)

Early in the case, sit down and meet with your case agent to:

- Make sure the charging document is accurate
- Make sure you have all reports, supplements, evidence
- Discuss the further investigation you and the case agent would like to see happen and strategize how to accomplish that
- Discuss what outcome / plea your case agent would like
- Set goals and deadlines and at least one more substantive meeting to be held 90 days before the trial



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## Post Charging Investigation

**Why would you continue to investigate after formal charges are filed?**

- Strengthen your current charges
- Discover other appropriate crimes to charge to **complete the story**, enlarge the pool of relevant evidence that you can use at trial, increase defendant's sentencing exposure, find other wrongdoers and **other victims**
- Respond to likely defenses



## Post Charging Investigation

**What additional investigation would you like to see done?**

- Interviews of other hotel employees (managers, housekeepers, etc.)
- Evidence against co-conspirators: confrontation calls, body wires, phone taps?
- Photos of victims at or near the time of your crime
- Cellbrite / forensic exams of the various phones
  - Other prostitution ads
  - Sexual and nonsexual photos of victims
  - Photo metadata (date & time, GPS, etc.)
  - Texts, chats, etc.
  - Gang evidence
- Defendant's credit card and bank records
- Facebook, Backpage, Craigslist, ISP, etc. records
- Hotel records (which hotels?)
- Photos of other hotels defendant stayed at within the last year
- SANE exams
- Forensic interviews



## Post Charging Investigation

### What additional investigation would you like to see done?

- Other corroborative evidence (e.g. interviews of the victims' friends, family, teachers / school employees, social workers, counselors, etc.)
- Search warrant for the hotel rooms
- DOC, GITEM and AZ and CA LEA gang records
- Non-legal jail phone calls & video visitations- defendant & all witnesses
- Drugs to the lab
- Def's prior court records (J&S, penpaks, presentence reports, MH, etc.)
- Find experts in victimology, gangs, domestic violence, prostitution
- Evidence to use at a mitigation / aggravation hearing
- Records from the shelter that Janet was taken from- A.R.S. §13-701(D)(24)



## Post Charging Investigation

### A few tools for conducting a post-arrest investigation:

DPS crime lab / ACTIC / RMIN for cell phone forensics

Prosecutor's desk subpoena for subscriber info – ARS § 13-3018

Grand Jury Subpoenas ?

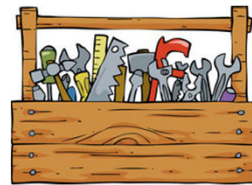
Contact the subpoena compliance department of Facebook (or other online entity) for assistance getting the correct language into subpoenas and search warrants, including learning what is available to ask for.

Evidence Preservation Letters

Search Warrants ?

Rule 15.2(g) orders

<http://www.search.org/resources/isp-list/>



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## U & T Visas

U Visas are a great tool for ensuring the availability of witnesses who might otherwise be deported prior to trial. U Visas are available when the witness meets all of the following conditions:

1. Victim of a completed (or preparatory) status crime. Some examples are: involuntary servitude, prostitution, sexual exploitation, trafficking;
2. Has suffered substantial physical or mental abuse from the crime;
3. Has helped or is likely to help in the investigation or prosecution of the crime;
4. Has useful information concerning the crime;
5. The crime violated the laws of the United States or occurred in the U.S.

T Visas are similar to a U Visas, have lesser eligibility restrictions, and are only available in trafficking cases. There may be less availability for T Visas and a much longer wait time and more bureaucracy.

- A victim with a visa may be entitled to work in the U.S. and may be able to apply to bring family members to the US legally.
- U Visa applications can be signed by the County Attorney or his/her designee
- **The State should promptly disclose the existence of a visa application (and any resulting visa) to the defense**

## Department of Child Safety Considerations

- Crimes involving minor witnesses and victims often will have DCS involvement if the child has no available parent, or a parent is the suspect
- Each Arizona county has joint protocols for working with DCS at all stages of applicable cases, from the time the crime is discovered through trial
  - A good working relationship with DCS can assist the State in obtaining victim input, building rapport with the victim, locating the victim or witness for testimony at hearings and trial, and may aid in learning about the existence of discoverable evidence in DCS' possession





## Other Case Issues

- Victims may be reluctant, afraid, **in love with the defendant**, **unavailable**, or may return to their abusers prior to trial
- **Victims and witnesses may have unclean hands**, may have been an accomplice to the victimization of others, and may have criminal, gang, drug, and/or mental health issues
- The **victim may have been a willing participant at times**
- Depending on the facts and how you and your office approaches cases, the victim may have been charged with crimes
- Victims and witnesses may have received a U or T Visa to testify
- Co-defendants may be missing or absent from trial
- Language and cultural barriers (including **distrust of authority figures**) may exist
- Certain crimes (e.g. drug trafficking & prostitution) may present nullification issues

**Work to build a rapport with witnesses and victims. Consider experts in: victimology, gangs, DV, prostitution, drugs, etc.**



## Plea Considerations

- These are often high-profile cases
- Follow your agency's policies, and know when to involve supervisors
- **What are you and your agency trying to accomplish with the plea?**
- How strong / weak is your case?
- How strong / weak is the defendant's case?
- Your judge's history of handling similar cases
- Can your defendant lead to the rescue of other victims or the identification of other perpetrators?
- Do you want to do free talks?
- Do you want to require testimony or snitch agreements?
- Have you considered relevant safety concerns before inducing a defendant, victim, or witness to wear a wire or do a confrontation call?
- Make sure your victims and case agent know what the status of plea negotiations are, and consider their input



## Pretrial Motions

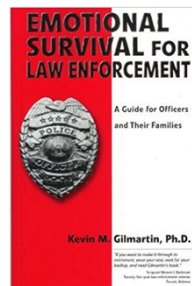
- Rule 609 motion
- Rule 404(b) motion- defendant's prior acts to show: motive, intent, preparation, plan, knowledge, absence of mistake, etc.
- Rule 404(c) motion- aberrant sexual propensity to commit charged "sexual offense" (does not include sex trafficking or prostitution) and **must be filed at least 45 days before trial**
- If your victim or other witnesses are out of state, motion for subpoena to secure their attendance – A.R.S. §13-4091 et seq. and/or motion for out of state deposition – A.R.S. §13-4111 et seq.
- If your victim is in Arizona but have reason to believe they may disappear before trial- motion for (video) deposition- A.R.S. §13-4101 et seq. & ARCP Rule 15.3
- Evidence Rule 902(11) notice of intent to use business records with a records custodian certificate in *lieu* of a Rule 803(6) records custodian
- Motions *in limine* as appropriate

## Sentencing Considerations

- Unless you stipulated to a sentence, **always do a sentencing hearing**
- Call the victim's friends, family, social workers, teachers, etc. to testify about who the victim was and is, what his/her childhood hopes and dreams were, and any changes seen in the victim due to the crime, etc.
- Consider a financial crimes expert to testify about the defendant's likely profits based on any evidence regarding how much money the victim was sold for & the number of encounters per week, month, year,
- Consider a medical expert to tell the judge about likely or actual health effects of prostitution and drug use
- Introduce photos of hotel rooms, as well as the Facebook, Craigslist, Backpage ads.
- Call the hotel manager to testify about how this crime could effect the hotel's reputation and the reputation of the other hotels involved
- Defendant's tattoos and any evidence of gang affiliation? You may need expert to testify
- Does the defendant have priors? If so, try to get J&S, presentence reports, letters to the judge from the def. and his well-wishers
- Defendant's non-legal jail phone calls and video visits

## Take Care of Yourself

- Take time to safeguard your own mental wellbeing
- Dr. Kevin Gilmartin's Emotional Survival for Law Enforcement  
*-Hypervigilance Biological Rollercoaster*



## The Usual Disclaimers

Today's presentation is a brief overview of numerous complicated topics. Many of these topics are suitable for in-depth CLE presentations of their own. Accordingly, many topics have been simplified or omitted, or perhaps just forgotten. The views (and especially any errors) in this presentation are my own. Please don't hold anyone else accountable for them.



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